IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Crl.Rev.Pet.No. 2772 of 2007()

CC.146/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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REVN. PETITIONER:

SALU,S/O.PAULOSE,KOLANATTU PARA,
CHENGAMANAD,ANGAMALLY.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM. (CRIME NO.189 OF 1993 OF E.T NORTH
POLICE STATION).

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2772 OF 2007 B

Dated this the 6th day of November, 2007

O R D E R

This revision has been filed by the 2nd accused in C.C.No.146/07 on the file of JFCM-II, Ernakulam. The above case arose out of crime No.189/1993 of Ernakulam Town North Police Station for an offence punishable under section 6 of the Kerala Motor Spirit and High Speed Diesel Oil(Maintenance & Regulations of Supply) Order, 1979 read with sections 3 and 7(1)(e)(ii) of the Essential Commodities Act, 1955. The occurrence in this case was on 2.8.1993 when the three accused persons are alleged to have pilfered diesel from a tanker lorry for the purpose of clandestine sale.

2. Five items of properties including two sample bottles of diesel were produced before the Special Court at Thrissur for trial of cases under the Essential Commodities Act and were received in Court as T.No.607/1993. The said items of properties consisted of the tanker lorry involved in the case as well. The lorry was released to the owner on kychit by the Special Court. Th two

sample bottles produced before the Court were intended to be despatched to the Chemical Examiner for analysis. Pursuant to the verdict of the Hon'ble Supreme Court, the Special Court at Thrissur was abolished and the present case was transferred to JFCM-II, Ernakulam, where it is pending as C.C.No.146/07. The revision petitioner/2nd accused was an applicant for a passport and consequent on the passport authority refusing to issue a passport to him, when he made enquiries it was revealed that the present crime was pending against the revision petitioner and that was the reason for the refusal to issue a passport to him. Thereupon the revision petitioner approached this court by filing Crl.M.C.No.2407/04 to quash the proceedings contending that the threat of prosecution was haunting him for the past 12 years without any sign of the same terminating either way. This court closed the Crl.M.C. as per Annexure-A1 order dated 11.8.07 reserving the right of the petitioner to plead for a discharge before JFCM-II, Ernakulam. Thereafter, the petitioner moved the Magistrate for discharge. As per the impugned order dated 15.6.07, the Magistrate held that the petitioner/accused is not entitled to get a discharge since the sample bottles of diesel were

reported to be either damaged, lost or could not be found out in the Special Court at Thrissur and that the matter was reported to the High Court and orders were awaited from the High Court regarding those samples. The learned Magistrate was of the view that the accused cannot be discharged before getting orders from the High Court regarding the missing samples. It is the said order which is assailed by the 2nd accused in this revision.

3. This court directed the Registry to ascertain from the Special Court where the case was originally instituted, as to whether the sample bottles had been traced out, and if not, whether any enquiry was conducted in the matter and what was the result of such enquiry, if any, conducted. As per communication dated 14.8.07 JFCM-II, Ernakulam also reported that the sample bottles which were items 4 and 5 in the property list could not be traced out and the Motor Accidents Claims Tribunal, Thrissur, which is the court which has occupied the premises of the Special Court after its abolition, has also reported that the list of material objects damaged or lost could not be found out. The learned Magistrate also reported that eventhough he had deputed a police constable directly to the MACT, Thrissur to

conduct a search and collect the sample bottles, the said attempt was also in vein. Under these circumstances, the Registry was directed to conduct an enquiry preferably through the Registrar-Vigilance with regard to certain matters indicated in the direction of this court. Accordingly, Registrar-Vigilance has conducted an enquiry. In the detailed report dated 1.10.2007 submitted by the Registrar-Vigilance it has been stated that the sample bottles are not traceable and that the samples were also not subjected to chemical examination.

4. In order to bring home the guilt of the accused the prosecution will have to prove that the liquid which the accused was allegedly seen pilfering from the tanker lorry was high speed diesel oil which is one of the components of the “petroleum product” as defined under section 2(e) of the Kerala Motor Spirit and High Speed Diesel Oil(Maintenance & Regulation of Supply) Order, 1979. It is only if the liquid which was seen pilfering satisfies high speed diesel oil which in turn is a “petroleum product” covered by section 6 of the said Order can the prosecution expect to secure a conviction against the accused. It is only if section 6 of the above Order is attracted, can it amount

to an offence punishable under section 7 of the Essential Commodities Act, 1955. Eventhough the learned Public Prosecutor submitted that the matter should go for trial during which the detecting officer may be able to identify the liquid as high speed diesel oil, even for identifying the same, the property should be available for examination in court. That apart, if the detecting officer was competent enough to identify the oil as high speed diesel oil without any difficulty, then there was no need for drawing sample for the purpose of forwarding the same to the chemical examiner for analysis and report. Under these circumstances, it will be an exercise in futility to allow the trial to proceed. This is a case where the revision petitioner has been subjected to the trauma of a proposed trial keeping the sword of Damocles hanging over his head for the past 14 years. It will be a travesty of justice to permit the proceedings to drag on further without any useful purpose being served. Having regard to the futility of the trial and the inordinate delay for which the revision petitioner cannot be blamed, I see no reason to compel the petitioner to the avoidable ordeal of a trial. The dismissal of the petitioner's application for discharge by JFCM-II, Ernakulam as per

the impugned order dated 15.6.07 cannot, therefore, be sustained. The impugned order is accordingly set aside and the accused is discharged of the offences referred to above.

In the result, this revision is allowed as above.

(V. RAMKUMAR, JUDGE)

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